

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEN MEINDERTSMA)
Media Park)
Journaalplein 1 Hilversum)
Noord-Holland, Netherlands 1217 ZK)
)
Plaintiff,)
) Case No: 19-cv-3580
v.)
)
DEPARTMENT OF DEFENSE)
1400 Defense Blvd. Pentagon)
Washington, DC 20301)
)
Defendant.)
)

COMPLAINT

I. INTRODUCTION

1. Plaintiff Ben Meindertsma (“Plaintiff”) brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, by Defendant Department of Defense (hereinafter “DOD”) in failing to provide Plaintiff with all non-exempt records responsive to his October 19, 2018, FOIA request to this federal agency, seeking DOD records related to a June, 2015 military air strike in Hawijah, Iraq.

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

IV. PARTIES

4. Plaintiff, Ben Meindertsma, is an individual that, at all times relevant herein, has resided in the Kingdom of the Netherlands.

5. Defendant Department of Defense is a federal agency of the United States, and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)C.

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

13. The FOIA statute also expressly provides that an agency must provide for expedited processing of a FOIA request where the FOIA requestor demonstrates a compelling need for that information. *See* 5 U.S.C. § 552(a)(6)(E). A compelling need for

records, requiring expedited processing of a FOIA request, includes, *inter alia*, circumstances where the FOIA requester has demonstrated the information sought is urgently needed by an individual primarily engaged in disseminating information, in order to inform the public concerning actual or alleged federal government activity. *Id.*

VI. FACTUAL ALLEGATIONS

14. On or about October 19, 2018, Ben Meindertsma, a journalist employed by the Dutch Broadcast Foundation, sent a FOIA request to the Department of Defense (DOD), seeking all records, documents, reports and investigations pertaining to a June, 2015 air strike in Hawijah, Iraq, including DOD records of any After Action Review of this military action, and any other follow-up agency investigations into the human casualties resulting from this military action.

15. On or about October 19, 2018, DOD sent an email to Plaintiff acknowledging receipt of his FOIA request.

16. On or about October 23, 2018, DOD sent a letter to Plaintiff acknowledging his October 19, 2018, FOIA request and assigning it as USCENTCOM case #19-0014.

17. On or about September 27, 2019, Plaintiff sent an email to DOD requesting expedited processing of his FOIA request, because he is a person primarily engaged in information dissemination, and because there is an urgency to inform the public about the actual or alleged federal government activity in the records which he requested.

18. On or about September 27, 2019, Plaintiff sent a follow up email to his earlier

September 27, 2019, to DOD with additional information supporting Plaintiff position that the agency should provide expedited processing of his October 19, 2018, FOIA request.

19. On or about September 30, 2019, DOD sent an email to Plaintiff denying Plaintiff's request for expedited processing of his October 19, 2018, FOIA request.

20. On or about October 3, 2019, Plaintiff sent an email to DOD renewing his request for expedited processing of his October 19, 2018, FOIA request, and providing additional information supporting his request for expedited processing.

21. On or about October 8, 2019, DOD sent a letter to Plaintiff denying his request for expedited processing of his October 19, 2018, FOIA request.

22. As of the date of the filing of this action, Plaintiff Meindertsma has still not received a final agency decision or any of the records which he requested in his October 19, 2018, FOIA request to the DOD described above.

VII. CLAIMS FOR RELIEF

23. Plaintiff realleges, as if fully set forth herein, paragraphs 1-22 previously set forth herein.

24. Defendant DOD has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records for his October 19, 2018, FOIA request.

25. By failing to provide Plaintiff with all non-exempt responsive record to his October 19, 2018, FOIA request as described in paragraph 14 above, Defendant DOD has

denied Plaintiff's right to this information as provided by the Freedom of Information Act.

26. Defendant DOD has also violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's October 19, 2018, FOIA request.

27. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's October 19, 2018, FOIA request, Defendant DOD has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act.

28. Unless enjoined by this Court, Defendant DOD will continue to violate Plaintiff's legal rights to be provided with copies of the records which he has requested in his FOIA request described in paragraph 14 above.

29. Defendant DOD has violated FOIA by failing to expedite Plaintiff's October 19, 2018, FOIA request

30. By failing to expedite Plaintiff's October 19, 2018, FOIA request as described in paragraph 14 above, Defendant DOD has denied Plaintiff's right to timely receive this information as provided by the Freedom of Information Act.

31. Plaintiff is directly and adversely affected and aggrieved by Defendant DOD's failure to timely provide responsive records to his October 19, 2018, FOIA request described above.

32. Unless enjoined by this Court, Defendant DOD will continue to violate Plaintiff's legal rights to be provided with copies of the records which he has requested in his FOIA request described in paragraph 14 above.

33. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

34. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff, providing the following relief:

1. Declare Defendant DOD has violated FOIA by failing to provide Plaintiff with all non-exempt records responsive to his October 19, 2018, FOIA request.
2. Declare Defendant DOD has violated FOIA by failing to complete an adequate search for records responsive to Plaintiff's October 19, 2018, FOIA request.
3. Declare Defendant DOD has violated FOIA by failing to expedite the processing of Plaintiff's October 19, 2018, FOIA request.
4. Direct by injunction that Defendant DOD perform an adequate search for records responsive to his October 19, 2018, FOIA request, and provide Plaintiff with all non-exempt responsive records to Plaintiff's October 19, 2018, FOIA request.

5. Direct by injunction that Defendant DOD expedite its processing of Plaintiff's

October 19, 2018, FOIA request.

6. Grant Plaintiff's costs of litigation, including reasonable attorney fees, as

provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,

7. Provide such other relief as the Court deems just and proper.

DATED: This 27th day of November, 2019.

Respectfully submitted,

/s/

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